

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IVALINA PASSE,

Plaintiff,

ORDER

- against -

CV 2002-6494 (ERK) (MDG)

THE CITY OF NEW YORK,

Defendant.

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By order dated November 15, 2007, this Court addressed plaintiff's failure to participate in a telephone conference on November 15, 2007 and required her to submit an explanation and supporting documentation. See ct. doc. 77.

On November 20, 2007 at approximately 2:10 p.m., plaintiff called my chambers and informed my law clerk, Ms. Park, that she is currently in New York. When asked if plaintiff had received the Court's order dated November 15, 2007, which was mailed to her Pennsylvania address, plaintiff stated that she had not received it as she has been in New York. Plaintiff agreed to have Ms. Park read the order to her over the telephone. However, as Ms. Park read the first sentence, "[p]laintiff Ivalina Passe failed to participate in a conference ...[,]" plaintiff interrupted and stated that she did not fail to participate as she had called the Court and left messages that she was in the hospital for dehydration. Ms. Park informed plaintiff that the November 15, 2007 order directed her to submit medical

documentation substantiating her condition, which prevented her from appearing for her deposition and a conference with the Court, by November 29, 2007. Plaintiff stated that she would do so.

The Court received a letter from plaintiff on November 29, 2007 which stated, inter alia, that plaintiff was unable to attend her deposition on November 15, 2007 because both she and her daughter were ill. See ct. doc. 81. However, plaintiff did not provide any documentation regarding her medical condition.

On December 3, 2007 at approximately 3:18 p.m., plaintiff called my chambers and spoke with my secretary, Ms. DeVeaux. Plaintiff asked when the Court would be scheduling her deposition as she is not in Pennsylvania to receive her mail. Plaintiff did not provide an alternative mailing address. The Court previously warned plaintiff that, "it's your obligation to let us know if there are any changes to your address" and that "[i]f you want mail sent to a different address, you have to send me a letter and send [defendant's counsel] a letter telling [us] what the new address is." See Transcript of Conference on February 26, 2007 (ct. doc. 61) at 15, 16.

In light of plaintiff's representation that she is not in Pennsylvania and does not have access to her mail, the Court reluctantly gives her one final opportunity to comply with its November 15, 2007 order. Besides mailing this order to

plaintiff's residence in Pennsylvania, this Court will attempt to call plaintiff at the two telephone numbers that she has given the Court. If plaintiff will not be in Pennsylvania, the Court will seek a different mailing address where she can be reached.

1. Plaintiff must mail the documents set forth in the November 15, 2007 order to the Court by December 19, 2007.

2. Counsel for the defendant may file his response by January 3, 2008.

3. Should plaintiff fail to provide the requested documentation and satisfactory explanations as set forth in the November 15, 2007 order, this Court will recommend to the Honorable Edward R. Korman that this action be dismissed with prejudice for failure to comply with this Court's many discovery orders. Plaintiff is again warned that this is her final opportunity to comply with the Court's order.

SO ORDERED.

Dated: Brooklyn, New York
December 5, 2007

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

To: Ivalina Passe
177 Almond Lane
Wilkes Barre, PA 18702